

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WAYNE WALTON,

Plaintiff,

v.

THE STATE OF WASHINGTON *et al.*,

Defendants.

Case No. C05-5545RJB

ORDER TO AMEND THE  
COMPLAINT

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff has been given leave to proceed *in forma pauperis*. (Dkt. # 3).

The plaintiff in this action names Washington State, the Washington State Department of Corrections, and the Mc.Neil Island Corrections Center as defendants. (Dkt. # 5). In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct complained of was committed by a **person** acting under color of state law and that (2) the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other grounds*, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these

elements are present. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

None of the named defendants in this action are people. The Eleventh Amendment to the Constitution of the United States provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. Under the Eleventh Amendment, a state is not subject to suit by its own citizens in federal court. Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). Neither states nor state officials acting in their official capacities are persons for purposes of 42 U.S.C. § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 48, 71 (1989). This rule applies equally to state agencies. See Kaimowitz v. Board of Trustees of the Univ. of Ill., 951 F.2d 765, 767 (7<sup>th</sup> Cir. 1991); Johnson v. Rodriguez, 943 F.2d 104, 108 (1<sup>st</sup> Cir. 1991). Because the named defendants are not persons within the meaning of § 1983, plaintiff has not stated a cause of action.

The document submitted by plaintiff does not state a claim against any person and will not be accepted. Plaintiff is **ORDERED** to file an amended complaint. The amended complaint will act as a complete substitute for the original and must be received on or before **October 7<sup>th</sup>, 2005** or the court will enter a Report and Recommendation that this action be dismissed. Plaintiff is reminded that he must also send filled out Marshals Service Forms and a copy of the amended complaint for each defendant he wishes the Marshals Service to attempt to serve by mail.

The Clerk is directed to send a copy of this Order to plaintiff, and note the due date for the amended complaint as **October 7<sup>th</sup>, 2005**.

DATED this 6<sup>th</sup> day of September, 2005.

/s/ J. Kelley Arnold  
J. Kelley Arnold  
United States Magistrate Judge